



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title):

- **WAC 458-29A-100 (Leasehold excise tax--Overview and definitions.)**
- **WAC 458-29A-200 (Leasehold excise tax--Taxable rent and contract rent.)**
- **WAC 458-29A-400 (Leasehold excise tax--Exemptions.)**
- **WAC 458-29A-500 (Leasehold excise tax--Liability.)**
- **WAC 458-29A-600 (Leasehold excise tax--Collection and administration.)**

Date last adopted/issued: **August 26, 2002, for WAC 458-29A-400; and**
October 1, 1999, for WAC 458-29A-100, 458-29A-200,
458-29A-500, and 458-29A-600.

Reviewer: **Mark Mullin**

Date review completed: **August 18, 2003**

Briefly explain the subject matter of the document(s):

The rules in chapter 458-29A WAC provide information about the leasehold excise tax, which applies to the act or privilege of occupying or using publicly owned real or personal property under a leasehold interest.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.



2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

The rules in chapter 458-29A WAC explain the application and administration of the leasehold excise tax, which is imposed on the use and possession of publicly owned property by private persons. The rules provide pertinent definitions and explain the exemptions and credits available to taxpayers. The rules provide information on how taxable rent is to be computed and under what circumstances and by which methods taxable rent will be established by the Department of Revenue (Department). These rules also provide information about how to distinguish "contract rent" from other kinds of payments between the lessee and the lessor. Finally, these rules address the issues of liability for collection and remittance of the tax by public lessors.

There were several changes to the leasehold excise tax statutes in the 2003 legislative session. Chapter 261, Laws of 2003 provides a leasehold excise tax exemption for leasehold interests in buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of biodiesel fuel or biodiesel feedstock, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of biodiesel fuel or biodiesel feedstock. Chapter 339, Laws of 2003 provides a leasehold excise tax exemption for leasehold interests in buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of wood biomass fuel, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of wood biomass fuel. Chapter 1, Laws of 2003, 2nd sp. sess. provides a leasehold excise tax exemption for leasehold interests in certain port district facilities used by a manufacturer engaged in the manufacturing of superefficient airplanes.

Chapter 310, Laws of 2003 changes the way lease rates for marinas located on state-owned aquatic lands are calculated by the Department of Natural resources (DNR). While this legislation does not affect the leasehold excise tax statutes, it does have an indirect effect on the leasehold excise tax because it involves the way the DNR calculates lease rates for marinas located on state-owned aquatic lands.



There is no need at this time to revise any of the rules in chapter 458-29A WAC to reflect these legislative changes.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **Det. No. 00-210, 20 WTD 316 (2001).** This determination contains a discussion of the Department's authority to establish taxable rent which is different than contract rent. It provides guidance as to when a lease is negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. The fact pattern in the determination might make a good example in WAC 458-29A-200.



- **Det. No. 00-196, 20 WTD 279 (2001).** This determination provides guidance as to how the Department is to compute taxable rent. WAC 458-29A-200(6) provides that the Department must base its computation of taxable rent on (1) rent being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; or (2) what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person, or the general public. Although the rule lists the criteria for determining taxable rent in the alternative rather than conjunctive, the determination states that consideration of both criteria is mandatory. The determination, however, seems to indicate that consideration of only the fair rate of return method would be acceptable if information regarding comparable rentals is not available.
- **Det. No. 98-080, 18 WTD 42 (1999).** The definition of "contract rent" contains an exclusion for expenditures made by the lessee for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement. This determination provides guidance as to the meaning of this provision.
- **Det. No. 90-015, 9 WTD 65 (1990).** The definition of "leasehold interest" contains an exclusion for road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner. This determination clarifies that exploration for materials and products qualifies for this exclusion from the definition of leasehold interest.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

These rules are generally clear and concise, and they are providing the results they were designed to achieve. These rules reduce the need for readers to search multiple statutes for information about the leasehold excise tax.



WAC 458-29A-200, however, does contain information that could be misleading. Subsection (2) contains information about payments made by a lessee to a lessor that are excluded from contract rent. The rule provides that "payments made to or on behalf of the lessor for actual utility charges, . . . attributable to the lessee's space or prorated among multiple lessees, are not included in the measure of contract rent, if the actual charges are separately stated and billed to the lessee(s)." The rule contains an example illustrating this provision. There has been some confusion as to whether this provision in the rule means that any separate charge for utilities is not included in contract rent, even if it has no relation to the cost of providing the utility services to the lessee(s). The next time the rule is revised, the Department should clarify that "actual utility charges" refers to what the services attributable to the lessee's space actually cost the lessor. In other words, for payments to the lessor by the lessee for utility services to be excluded from contract rent, they must be based on the actual cost, or a reasonable estimation of the actual cost, of providing the utility services to the lessee.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X	X	Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no," identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
X		Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

The statutory authority for the Department to adopt these rules is RCW 82.29A.140.

These rules are largely consistent with the intent of the statutes that they were designed to implement. However, WAC 458-29A-100 (Rule 100) contains information that is arguably inconsistent with the statutes being implemented. The definitions of "leasehold interest," "license," and "permit" in Rule 100 provide that a leasehold interest does not include licenses or permits. But RCW 82.29A.020(1) defines leasehold interest as "an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership" The statute explicitly includes licenses and permits within the definition of "leasehold interest." This fact was recognized in *Mac Amusement Co. v. Dep't of Revenue*, 95 Wn.2d 963, 970-71 (1981).

The Department may want to consider recommending a change to the definition of leasehold interest in RCW 82.29A.020 to delete the references to lease, license, and permit, so that the statute would simply refer to "an agreement, written or verbal."



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

The Department has the exclusive authority to adopt rules for the administration of the leasehold excise tax.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

These are interpretive rules that impose no new or additional administrative burdens on business activities that are not imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

The information provided in these rules applies equally to all similarly situated taxpayers.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and



court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **RCW 82.29A.010 (Legislative findings and recognition.)**
- **RCW 82.29A.020 (Definitions.)**
- **RCW 82.29A.030 (Tax imposed -- Credit -- Additional tax imposed.)**
- **RCW 82.29A.040 (Counties and cities authorized to impose tax -- Maximum rate -- Credit -- Collection.)**
- **RCW 82.29A.050 (Payment -- Due dates -- Collection and remittance -- Liability -- Reporting.)**
- **RCW 82.29A.060 (Administration -- Appraisal appeal -- Audits.)**
- **RCW 82.29A.070 (Disposition of revenue.)**
- **RCW 82.29A.080 (Counties and cities to contract with state for administration and collection -- Local leasehold excise tax account.)**
- **RCW 82.29A.090 (Distributions to counties and cities.)**
- **RCW 82.29A.100 (Distributions by county treasurers.)**
- **RCW 82.29A.110 (Consistency and uniformity of local leasehold tax with state leasehold tax -- Model ordinance.)**
- **RCW 82.29A.120 (Allowable credits.)**
- **RCW 82.29A.130 (Exemptions.)**
- **RCW 82.29A.132 (Exemptions -- Operation of state route No. 16.)**
- **RCW 82.29A.134 (Exemptions -- Sales/leasebacks by regional transit authorities.)**
- **RCW 82.29A.135 (Exemption for leasehold interests in land, buildings, machinery, etc., used to manufacture alcohol fuel -- Exceptions -- Limitations -- Claims -- Administrative rules.)**
- **RCW 82.29A.136 (Exemptions -- Certain residential and recreational lots.)**
- **RCW 82.29A.140 (Rules and regulations.)**
- **RCW 82.29A.150 (Cancellation of taxes levied for collection in 1976.)**
- **RCW 82.29A.160 (Improvements not defined as contract rent taxable under Title 84 RCW.)**
- **RCW 82.29A.900 (Effective date -- 1975-'76 2nd ex.s. c 61.)**
- **RCW 82.29A.910 (Severability -- 1975-'76 2nd ex.s. c 61.)**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **None.**

Court Decisions:

- ***Washington Public Ports Ass'n v. State*, 148 Wn.2d 637 (2003) (whether the Department exceeded its authority under RCW 82.29A.050 by holding public port districts liable in certain situations for unpaid or uncollected leasehold excise tax under WAC 458-29A-500).**
- ***Washington Mutual Savings Bank v. Dep't of Revenue*, 77 Wn. App. 669 (1995) (whether the improvements under the lease at issue are subject to property tax as personal property or to leasehold excise tax).**
- ***MAC Amusement Co. v. Dep't of Revenue*, 95 Wn.2d 963 (1981) (whether taxpayer was entitled to a refund of leasehold excise taxes for those portions of its rent attributable to**



its favorable location and monopoly rights, and whether leasehold excise tax applies to pedestrian thoroughfares).

Board of Tax Appeals Decisions (BTAs):

- ***Tri-City Country Club v. Dep't of Revenue*, BTA Docket No. 50863 (1998)** (whether the Department overvalued the golf course improvements for purposes of computing leasehold excise tax on the 13 holes that the taxpayer leased from the city of Kennewick).
- ***Central Washington Range Conservancy, Yakima Cy., v. Dep't of Revenue*, BTA Docket No. 95-2 (1997)** (whether appellant qualifies for a property tax exemption and, hence, is not subject to leasehold excise tax on land that it leased from Yakima County).
- ***Yakima Area Arboretum v. Dep't of Revenue*, BTA Docket No. 46923 (1996)** (whether appellant qualifies for a property tax exemption and, hence, is not subject to leasehold excise tax on land owned by the City of Yakima and occupied by the appellant rent-free).
- ***Northwest Fruit & Produce Co. v. Yakima Cy.*, BTA Docket No. 93-31 (1995)** (whether orchard trees are subject to property taxation when they are located on land owned by the State of Washington and leased to a person who, by the terms of the lease, remains the owner of the trees during the life of the lease).
- ***Gunter Geismann v. Dep't of Revenue*, BTA Docket No. 41980 (1992)** (whether the Department's leasehold excise tax assessment should be sustained).
- ***Rainier Mountaineering, Inc. v. Dep't of Revenue*, BTA Docket No. 37206 (1991)** (whether leasehold excise tax applies to amounts paid by appellant to the National Park Service, or whether the payments are for a nontaxable concession right to operate a guide service and climbing school on Mount Rainier).
- ***Hedreen v. Ridder*, BTA Docket Nos. 35789 & 35899 (1989)** (whether the improvements at issue are subject to property taxation or leasehold excise tax).
- ***Barberton Grange #571 v. Dep't of Revenue*, BTA Docket No. 35630 (1989)** (whether the appellant qualifies for a property tax exemption and, hence, is not subject to leasehold excise tax on its leasehold interest in a food booth owned by the Clark County Fair).
- ***Lake Cushman Co. v. Dep't of Revenue*, BTA Docket No. 35051 (1989)** (whether certain common areas and a golf course have value for purposes of application of leasehold excise tax).
- ***Indochinese Farm Project v. Dep't of Revenue*, BTA Docket No. 24475 (1983)** (whether the appellant qualifies for a property tax exemption and, hence, is not subject to leasehold excise tax on property it leases from King County).

Appeal Division Decisions (WTDs):



- **Det. No. 00-210, 20 WTD 316 (2001)** (lessees protest the assessment of additional leasehold excise taxes, arguing that their rent of one dollar per month was the maximum attainable).
- **Det. No. 00-196, 20 WTD 279 (2001)** (lessor protests an assessment of leasehold excise tax, arguing that the Department may not hold it liable for uncollected leasehold excise tax).
- **Det. No. 96-098, 19 WTD 187 (2000)** (taxpayer protests an assessment of leasehold excise taxes where the Department computed taxable rent in excess of contract rent).
- **Det. No. 98-080, 18 WTD 42 (1999)** (taxpayer protests additional leasehold excise taxes assessed on lessee's expenditures made for costs attributable to relocation of leasehold improvements).
- **Det. No. 98-99, 17 WTD 428 (1998)** (taxpayer petitions for a refund of leasehold excise tax arising out of its permits to use state and federal forest lands for its whitewater rafting business).
- **Det. No. 98-019, 17 WTD 252 (1998)** (taxpayer protests an assessment of additional leasehold excise taxes where the Department computed taxable rent in excess of contract rent).
- **Cite as Det. No. 94-151E, 15 WTD 37 (1995)** (county fair board protests an assessment of leasehold excise tax upon rent received during periods while the fair was not in operation).
- **Det. No. 92-316, 12 WTD 477 (1992)** (county fair association protests an assessment of leasehold excise tax on its leases to users of fairgrounds property).
- **Det. No. 91-126, 11 WTD 319 (1992)** (taxpayer protests a leasehold excise tax assessment for his interest in a pro shop and a restaurant at a city-owned golf course).
- **Det. No. 90-015, 9 WTD 65 (1990)** (taxpayer protests an assessment of leasehold excise tax on lease of public lands for oil and gas exploration).
- **Det. No. 90-60, 9 WTD 95 (1990)** (taxpayer protests an assessment of leasehold excise tax on the grounds that it is a sublessor of the proper taxpayer or, alternatively, that either no contract rent was paid or the fair rental value of the property is zero).
- **Det. No. 89-279, 7 WTD 371 (1989)** (taxpayer protests an assessment of leasehold excise tax contending that the leasehold excise tax is required to mirror exactly the mechanics of the property tax statutes).
- **Det. No. 89-3, 7 WTD 105 (1989)** (taxpayer protests an assessment of leasehold excise tax relating to (1) parking spaces; (2) lessees who held multiple leases of different areas of the taxpayer's property; (3) a purported product lease; (4) the portion of an architect's fees guaranteed to the port by its eventual lessee; and (5) a lease allegedly



exempt from leasehold excise tax as part of the operating property of a public utility which is assessed and taxed as a public utility under chapter 84.12 RCW).

- **Det. No. 88-464, 7 WTD 85 (1988)** (taxpayer protests an assessment of leasehold excise tax on the grounds that the contested portion assesses tax on payments made to the lessor for repairs or improvements to a road located outside the leased property).
- **Det. No. 88-364, 6 WTD 399 (1988)** (taxpayer protests an assessment of leasehold excise tax, arguing that because the lessor did not advise or bill the taxpayer for the tax, and because the contract between the two was ambiguous, the tax should be the sole responsibility of the lessor).
- **Det. No. 88-160A, 6 WTD 209 (1988)** (taxpayer petitions for an adjustment of Final Determination 88-160 to exclude the value of its golf course).
- **Det. No. 87-185, 3 WTD 209 (1987)** (taxpayer petitions for a refund of leasehold excise tax, arguing that what it has is a non-taxable concession right rather than a taxable leasehold interest).
- **Det. No. 87-112, 3 WTD 39 (1987)** (taxpayer protests the assessment of leasehold excise tax where the leased property was privately owned when the lease was signed and where the Department computed taxable rent in excess of contract rent).
- **Det. No. 87-111, 3 WTD 29 (1987)** (taxpayer protests several leasehold excise tax assessments relating to (1) the rental of a swimming pool to a nonprofit organization; (2) the lease of certain parking spaces; (3) the alleged leasehold interest of two golf professionals hired by the taxpayer to operate the two golf courses it owns; and (4) the alleged leasehold interest of a mobile vendor at the county-owned fairgrounds).
- **Det. No. 86-242, 1 WTD 139 (1986)** (taxpayer protests a leasehold excise tax assessment relating to its lease of a golf course).
- **Det. No. 86-39A, 1 WTD 261 (1986)** (taxpayer protests an assessment of leasehold excise tax where a balloon payment, which represented the cost of leasehold improvements made by the taxpayer/lessee, was included within the taxable contract rent; taxpayer also seeks a refund of leasehold excise tax paid on interest expenses incurred in financing the leasehold improvements).
- **Det. No. 86-311, 2 WTD 101 (1986)** (taxpayer protests an assessment of leasehold excise tax, arguing that it is not the intent of the leasehold excise tax law to impose liability upon the use of public property for a public purpose).

Attorney General Opinions (AGOs):

- **AGLO 1979 No. 17.** The issues in this AGLO are whether leasehold excise tax applies to lessees of a port-operated marina located on property leased by the port from a federally-recognized Indian tribe and, if so, whether leasehold excise tax also applies in the case of tribally-owned vessels using the moorage facility?



- **AGO 1977 No. 8.** The issue in this AGO is whether improvements added to publicly owned property, which has been leased to a person who would not be exempt from ad valorem property taxes if that person owned the property in fee, are subject to leasehold excise tax or are they subject to property tax?

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Special Notice, titled: Leasehold Excise Tax Reduction Program for Senior Citizen/Disabled Persons--Eligibility Revisions**
- **Special Notice, titled: Important Information for Lessors, Lessees and Sublessees of Publicly-owned Property**
- **Special Notice, titled: Biofuel Manufacturers**
- **Leasehold Excise Tax Q&A**

10. Review Recommendation:

- _____ **Amend**
- _____ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- X** **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

There is no need to amend any of the rules in chapter 458-29A WAC at this time. At such time as WAC 458-29A-100 and 458-29A-200 are amended, information from the WTDs identified above in section 3 of this review should be incorporated into those rules. Also at that time, the treatment of utility charges should be clarified in WAC 458-29A-200 as noted above in section 4 of this review. Finally, at such time as WAC 458-29A-400 is amended, consideration should be given to incorporating the exemptions passed into law in the 2003 legislative session as noted above in section 2 of this review.



11. Manager action: Date: 8/26/03

AL Reviewed and accepted recommendation

Amendment priority:

- 1
- 2
- 3
- 4